IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.475 OF 2004
IN
CHAMBER SUMMONS NO.786 OF 2004
IN
SUIT NO.1850 OF 2001

Mahendra Dungarshi Momaya .. Appellant

v/s.

Rajendar Dungarshi Momaya & ors. .. Respondents

Mr.Suhash Oak for the appellant.

Mr.K.K.Singhvi with Mr.T.N.Subramanium i/by Mr.Rajesh Shah for respondent Nos.3 and 4.

Mr.R.S.Apte for respondent No.5.

Mr.D.R.Dhurat, 1st Asstt. to Court Receiver present.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 25th November, 2004

P.C.

This appeal is directed against the order dated 9th July, 2004 passed by the learned Chamber Judge in Chamber Summons No.786 of 2004. Interalia in the chamber summons it was prayed by the defendant that the Court Receiver be directed to take necessary steps to restore the possession of the part of the land out of the property described in Exhibit 'A' to the chamber summons and also direction to the Court receiver to take necessary steps to stop the construction activities on the property described in Exhibit 'A' to the chamber

summons.

2. Exhibit ‘A’ of the plaint describes property thus-

> "22,000 sq. ft. of land and building thereon situate at Naupada, Thana, within the limits of Thana Municipal Corporation and within jurisdiction of sub-registration district and registration district of Thana. Includes 8,000 sq.ft. : All rooms- Cashier Room, Manager office, Staff Room, Upstairs Room (Head Office)"

3. Item (C) of Exhibit ‘B’ annexed to the plaint describes the property thus-

> "The building lying AND SITUATE at plot No.173, Krishna Kunj, Valji Ladha Road, Mulund (West), Mumbai - 400 080. (As per Exhibit-E)."

4. On 4th July, 2001, the Court Receiver took possession of the properties described in Exhibit ‘A’ to the plaint and item ‘C’ of Exhibit ‘B’ to the plaint.

5. The necessity of the chamber summons by the

defendant arose as according to him, the plaintiff started constructions over the part of the property for which the Court Receiver had already been appointed. The learned Chamber Judge sought for the Court Receiver's report. The Court Receiver submitted the report to the Chamber Judge on 12th June, 2004. On consideration of the matter, the learned Chamber Judge found that it was not possible to pass any order to the chamber summons and that the parties may take out appropriate proceedings or make a specific application in the pending proceedings. Aggrieved thereby the defendant has come in appeal. When the matter came up before us on 6th October, 2004, we found that the report submitted by the Court Receiver on 12th June, 2004 was not specific and we wanted the Court Receiver to be specific and, accordingly asked him to submit specific report. Pursuant thereto, the report has been submitted by the Court Receiver on 12th October, 2004. On prima facie consideration of the Court Receiver's report dated 12th October, 2004, we issued notice to the respondent Nos.3 and 4 to show cause why they should not be committed to contempt for having acted in defiance of the order dated 13th June, 2001. To the suo motu contempt petition, the contemnors- respondent Nos.3 and 4 have filed reply affidavit. They have asserted that no construction activity is being carried out in the property of the

defendant.

6. We heard the learned counsel for the appellant and the learned senior counsel for respondent Nos.3 and 4. From the available material that is placed on record, it cannot be said that any construction activity is carried on by the respondent Nos.3 and 4 in defiance of the order dated 13th June, 2001 or in the final plot being plot No.203 belonging to the defendant. The respondent Nos.3 and 4 seem to have started construction of wall in their plot being final plot No.208 demarcating their plot from the defendant's final plot No.203. Our observation is confined only for the consideration of this appeal and the suo motu contempt petition and obviously these observations have no bearing on the proceedings that may be taken out by the parties claiming title over the subject property.

7. Before we close, we record our dissatisfaction about the manner in which the reports are submitted by the Court Receiver. The first report dated 12th June, 2004 submitted by the Court Receiver before the learned Chamber Judge was not clear and specific. The subsequent report dated 12th October, 2004 submitted by the Court Receiver pursuant to our order dated 6th October, 2004 is also highly unsatisfactory. As a matter of fact, the said

report dated 12th October, 2004 has been submitted by the Court Receiver sitting in his office even without visiting the site. We deprecate this way of functioning of the office of the Court Receiver.

8. Be that as it may the impugned order does not call for any interference.

9. We, accordingly, dismiss the appeal.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)